

The Honorable Marsha J. Pechman

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

TRAVIS MICKELSON, DANIELLE H.  
MICKELSON, and the marital community  
thereof,

Plaintiffs,

v.

CHASE HOME FINANCE LLC, et al.,

Defendants.

No. C11-01445 MJP

MOTION FOR CERTIFICATION  
PURSUANT TO FRCP 54 (B)

NOTED FOR CONSIDERATION:  
FRIDAY, JUNE, 15, 2012

**Relief Requested:** Plaintiffs Travis Mickelson and Danielle H. Mickelson (Mickelsons) respectfully move this Court certify its Order Denying Mickelsons' Motion for Reconsideration so as to allow a permissive interlocutory appeal.

**Issue:** Should this Court certify its order granting the denial of Mickelsons' Motion for Reconsideration pursuant to Fed. R. Civ. Pro. 54(b)<sup>1</sup> so as to make the order appealable pursuant to 12 U.S.C. 1292 (3)(b)<sup>2</sup> and FRAP 4(a)(3)<sup>3</sup>?

<sup>1</sup> Fed. R.Civ. Pro. 54(b) states:

JUDGMENT ON MULTIPLE CLAIMS OR INVOLVING MULTIPLE PARTIES. When an action presents more than one claim for relief—whether as a claim, counterclaim, crossclaim, or third-party claim—or when multiple parties are involved, the court may direct entry of a final judgment as to one or more, but fewer than all, claims or parties only if the court expressly determines that there is no just reason for delay.

FACTS: This Court granted defendants' motion to dismiss. A copy of that Order is attached hereto as Appendix I. The Mickelson's moved this Court reconsider its Order. The Court ordered a response to the Micklesons' motion to reconsider. A copy of this Order is attached as Appendix II. Thereafter, this Court denied the Mickelsons' motion for reconsideration. A copy of that Order is attached hereto as Appendix III.

At page 2 of Appendix III this Court states:

The Court does not find any manifest error in its decision as to Plaintiffs' quiet title claim premised on the credit bid claim. Plaintiffs contend Freddy Mac and the trustee on their deed of trust violated the Deed of Trust Act by permitting Freddie Mac to make a credit bid at the nonjudicial foreclosure of Plaintiffs' home. They assert that only Chase was allowed to make a credit bid because it was the statutory beneficiary and that Freddie Mac was not. Plaintiffs are correct the Deed of Trust permits only the beneficiary to make a credit bid. RCW 61.24.070(2). However, in order to state a claim of quiet title to void the sale of their home, Plaintiffs must show not only that there was not strict compliance with the Deed of Trust Act, but that they suffered prejudice. Amersco v. Independence Funding, Inc. v SPS Props., LLC, 129 Wash. App. 532, 537 (2005). Here, even if Freddie Mac was allowed to purchase Plaintiffs home via credit bid at the trustee's sale (a point Defendants contest), Plaintiffs have not alleged any prejudice arising out of this arrangement.

---

Otherwise, any order or other decision, however designated, that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties does not end the action as to any of the claims or parties and may be revised at any time before the entry of a judgment adjudicating all the claims and all the parties' rights and liabilities.

<sup>2</sup> 12 USC 1292(3)(b) states:

(b) When a district judge, in making in a civil action an order not otherwise appealable under this section, shall be of the opinion that such order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation, he shall so state in writing in such order. The Court of Appeals which would have jurisdiction of an appeal of such action may thereupon, in its discretion, permit an appeal to be taken from such order, if application is made to it within ten days after the entry of the order: Provided, however, That application for an appeal hereunder shall not stay proceedings in the district court unless the district judge or the Court of Appeals or a judge thereof shall so order.

<sup>3</sup> FRAP 4 (a) PETITION FOR PERMISSION TO APPEAL.

(3) If a party cannot petition for appeal unless the district court first enters an order granting permission to do so or stating that the necessary conditions are met, the district court may amend its order, either on its own or in response to a party's motion, to include the required permission or statement. In that event, the time to petition runs from entry of the amended order.

1 Plaintiffs have not shown any facts warranting reconsideration and their invocation  
2 of future changes in Washington law is irrelevant.

3 **Argument:** This Court has discretion to certify its order denying the Mickelsons' motion  
4 for reconsideration if it certifies that its order "involves a controlling question of law as to  
5 which there is substantial ground for difference of opinion and that an immediate appeal from  
6 the order may materially advance the ultimate termination of the litigation." Fed. R. Civ. Pro.  
7 54(b). FRAP 4(a)(3) indicates the Mickelsons can move this Court to add the appropriate  
8 certification to this order to bring a permissive appeal.

9 This Court concedes in its Order denying Reconsideration that the defendants purposely  
10 violated the Deed of Trust Act by allowing someone other than the Beneficiary to offer a credit  
11 bid. Although the Court notes this fact is "disputed" among the parties, *supra*, this observation  
12 proves Plaintiffs' point that it was error to dismiss Mickelson's complaint pursuant to a motion  
13 to dismiss. This is especially so where the Mickelsons had pled facts from which inferences  
14 can be gleaned that defendants intended from the very outset to not follow the Deed of Trust  
15 Act.<sup>4</sup> Dkt. # 29, *passim*.

16 Amersco Independence Funding, Inc. v. SPS Props., LLC, 129 Wash. App. 532, 537  
17 (2005) is not on point. There, the Court following similar precedent held that where the  
18 policies of the Deed of Trust Act were fulfilled as a part of a sale and a technical error occurred,  
19 there must be a showing of prejudice to void the sale. Here, the Mickelsons' complaint alleges  
20 that they were never allowed to deal with the correct beneficiary during the sale process. Dkt. #  
21 29, ¶¶ 4.1 – 5.8. Moreover, that they were "dual tracked" as a part of a criminal conspiracy  
22

23  
24  
25  
26 <sup>4</sup> The Mickelsons' assertions in their complaint that these defendants purposefully acted together so as to violate  
27 Washington's Deed of Trust Act, must be accepted as true. A disputed purposeful violation of the Deed of Trust  
Act is the grist for juries; not this Court. Under these circumstances, this Court errs by deciding factual matters  
that our system reserves for juries. Balderas v. Countrywide, 664 F.3d 787, 90-1 (9th Cir. 2012).

1 designed to violate the Deed of Trust Act and allow defendants to take their home. Id., ¶¶ 6.1 –  
2 6.64.

3 The whole scheme was a scam prejudicing Michelson's to the point of having their house  
4 sold in a foreclosure sale while denying them "an adequate opportunity [] to prevent wrongful  
5 foreclosure" in that they were unable to communicate with the actual beneficiary prior to the  
6 home's sale. Amersco, at 887 (legislative objectives of nonjudicial foreclosure process:  
7 efficiency and economy; opportunity to prevent wrongful foreclosure; and promotion of  
8 stability of land titles). The Mickelson's did not know and could not have waived the illegal  
9 creditor bid process 5 days prior to when it occurred. Moreover, this illegal act was part of  
10 defendants overall scheme to not comply with the Deed of Trust Act. Amersco, the cases it  
11 cites, and Plein v. Lackey, 149 Wash.2d 214, 67 P.3d 1061, 1067 (2003) all hold that waiver  
12 must include actual knowledge or constructive knowledge of the defense to the foreclosure  
13 prior to the sale occurring. Here, defendants created a specific scheme that effectively  
14 precludes waiver under the Washington law this Court's order cites.  
15  
16

17 Existing Washington law limits the doctrine of waiver to technical violations of the Deed  
18 of Trust Act occurring after a sale in which the purposes of the Deed of Trust Act have been  
19 met. Further, waiver applies only where plaintiffs have actual or constructive knowledge of the  
20 violation. This Court's Order fails to discuss any of these differences and thereby ignores the  
21 ratio decedendi of the case it cites. Whether there must be prejudice under these factually pled  
22 circumstances "involves a controlling question of law as to which there is substantial ground  
23 for difference of opinion and ... an immediate appeal from the order may materially advance  
24 the ultimate termination of the litigation."  
25  
26  
27

CONCLUSION

This Court should certify its Order denying Mickealsons' motion to reconsider, pursuant to Fed. R. Civ. Pro. 54 (b) and FRAP 4, so that Michelson's can seek an interlocutory appeal before the Ninth Circuit.

DATED this 18th day of May, 2012 at Arlington, Washington.

Respectfully Submitted,

STAFNE LAW FIRM  
Attorneys for Plaintiffs

/s/ Scott E. Stafne  
Scott E. Stafne, WSBA #6964  
Andrew J. Krawczyk, WSBA #42982  
Stafne Law Firm  
239 N. Olympic Ave.  
Arlington, WA 98223  
Tel: (360) 403-8700  
Fax: (360) 386-4005

CERTIFICATE OF ELECTRONIC SERVICE

I hereby certify that on May 18, 2012, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Fred B. Burnside: fredburnside@dwt.com  
Rebecca J. Francis: RebeccaFrancis@dwt.com  
Heidi E. Buck: hbuck@rcolegal.com  
Andrew Gordon Yates: yatesa@lanepowell.com  
John S. Devlin, III: devlinj@lanepowell.com  
Erin McDougal Stines: erin.stines@fnf.com

DATED this 18th day of May, 2012 at Arlington, Washington.

/s/ Chessa R. Tachiki  
Chessa Tachiki, Paralegal  
Stafne Law Firm

## APPENDIX I

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

TRAVIS MICKELSON and DANIELLE  
H. MICKELSON,

Plaintiffs,

v.

CHASE HOME FINANCE LLC, et al.,

Defendants.

CASE NO. C11-1445MJP

ORDER GRANTING MOTION TO  
DISMISS

This matter comes before the Court on a motion to dismiss Defendants Chase Home Finance LLC, Mortgage Electronic Recording Systems, Inc., JPMorgan Chase Bank, N.A., and the Federal Home Loan Mortgage Corporation filed, in which the remaining defendants have joined. (Dkt. Nos. 43, 45, 47, 49.) Having reviewed the motion, the response (Dkt. No. 55), the reply (Dkt. No. 56), the supplemental authority (Dkt. No. 57), and all related papers, the Court GRANTS the motion to dismiss. The Court finds this matter suitable for decision without oral argument.

\\

### Background

Plaintiffs Travis and Danielle Mickelson filed suit against several defendants alleging various improper and illegal acts related to the foreclosure and trustee's sale of their home in Island County. The named Defendants are: (1) JPMorgan Chase Bank N.A. ("JPMorgan"); (2) Chase Home Finance LLC ("Chase") (which has allegedly merged into JPMorgan); (3) Federal Home Loan Mortgage Corporation ("Freddie Mac"); (4) Mortgage Electronic Recording Systems, Inc. ("MERS"); (5) Routh Crabtree Olsen, P.S.; (6) Chicago Title Insurance Company ("Chicago"); (7) Northwest Trustee Services ("NTS"); and (8) six individuals. The Court reviews the allegations regarding the loan and the foreclosure which are relevant to the motion to dismiss.

Plaintiffs obtained a loan from MHL Funding Corp on November 22, 2005, to purchase a home in Island County. (Amended Complaint ("AC") ¶ 3.3.) Plaintiffs signed a promissory note and a deed of trust that secured the loan. The deed of trust named MERS as the nominee and beneficiary and Chicago as the trustee. (Dkt. No. 29-1 at 7.) At an unspecified time, Chase purported to become the holder of the promissory note, which was endorsed in blank. Roughly three years later on September 19, 2008, Chase recorded an assignment of the deed of trust from MERS to Chase. (Dkt. No. 29-1 at 27.) The same day, NTS recorded an appointment of successor trustee on behalf of Chase, which appointed NTS the successor trustee to Chicago. (Dkt. No. 29-1 at 29.)

Starting in August of 2008, Plaintiffs fell behind on their mortgage payments and were threatened with foreclosure by Chase and NTS. (AC ¶ 3.23.) Plaintiffs tried to enter into a loan modification program beginning in late 2008. (AC ¶¶ 3.25-3.28.) Plaintiffs refer in their complaint to a letter from Chase dated February 9, 2009, indicating to Plaintiffs that they could

1 qualify for a loan modification. (AC ¶¶ 3.32.13.) Chase has provided a copy of this letter in its  
2 pleadings, which is properly considered on the motion to dismiss as it was referenced in the  
3 complaint. (Dkt. No. 43-4 at 13.) This letter is an offer to Plaintiffs to enter into a loan  
4 modification subject to several clearly disclosed requirements. The letter states in bold and  
5 underline: “Failure to return this Loan Modification Agreement and the money by the stipulated  
6 date will cause the modification agreement to be cancelled and the collections and/or foreclosure  
7 process to continue immediately.” (Id. (emphasis removed).) The letter also stated Plaintiffs had  
8 to return the signed agreement and their first payment within 72 hours. (Id.) There is no  
9 allegation that Plaintiffs complied with the terms of the letter, though they do allege they did not  
10 receive the letter until February 13, 2009. (AC ¶ 3.32.13.)

11 A letter dated February 20, 2009, from Chase (also referenced in Plaintiffs’ complaint)  
12 states that Plaintiffs failed to return the modification agreement or any payment, and the deadline  
13 was extended to February 26, 2009. (Dkt. No. 43-4 at 21; AC ¶ 3.32.16 (referencing the letter).)  
14 Plaintiffs do not allege they made the payments required of the first letter in the time allotted. A  
15 letter dated July 20, 2010, informed Plaintiffs that they had failed to qualify for the modification  
16 program because they had failed to make the required payments within the designated time.  
17 (Dkt. No. 43-4 at 33.) After NTS provided notices of the default and the foreclosure sale to  
18 Plaintiffs, it oversaw the sale of Plaintiffs’ home at a non-judicial foreclosure on March 25, 2011.  
19 (AC ¶ 3.28.) Plaintiffs allege on information and belief that Freddie Mac was the purchaser, but  
20 they disclaim any actual knowledge. (AC ¶ 3.29.)

21 In their sprawling amended complaint, Plaintiffs allege the appointment of MERS as the  
22 beneficiary to the first deed of trust was impermissible because MERS is not legally capable of  
23 being the beneficiary. (AC ¶¶ 6.4-6.21.) Plaintiffs claim the assignment of the deed of trust to  
24

1 Chase was invalid because MERS was not a proper beneficiary. (AC ¶ 6.22.) They also allege  
2 Chase did not hold a “wet ink” signature version of the promissory note, but admit that Chase  
3 held at least a “copy” of the note. (AC ¶ 5.5.) They also allege that assignment executed by  
4 MERS to Chase of the deed of trust was invalid because the signer is a “robo signer” who  
5 “lacked authority, knowledge or training to perform the transaction” on behalf of MERS. (AC ¶  
6 6.23.) As to Freddie Mac, Plaintiffs claimed it was not a “bona fide” purchaser.

7 In their hard-to-follow complaint Plaintiffs appear to pursue the following claims or  
8 causes of action against Chase, JPMorgan, MERS, and Freddie Mac: (1) quiet title; (2) injunctive  
9 relief related to the ownership of the home; (3) breach of contract; (4) unenforceability of the  
10 deed of trust based on a theory of unconscionability; (5) criminal profiteering in violation of  
11 RCW 9A.82 et seq.; (6) violations of the Deed of Trust Act; and (7) violations of the Consumer  
12 Protection Act (“CPA”). Defendants move for dismissal of all of these claims, while leaving  
13 untouched the claims Plaintiffs pursue under the Fair Debt Collection Practices Act. The  
14 remaining Defendants join in the motion, but provide no substantive briefing as issues distinct to  
15 them.

## 16 Analysis

### 17 A. Standard

18 On a motion to dismiss, the Court must accept the material allegations in the complaint as  
19 true and construe them in the light most favorable to Plaintiff. NL Indus., Inc. v. Kaplan, 792  
20 F.2d 896, 898 (9th Cir. 1986). A motion to dismiss filed pursuant to Rule 12(b)(6) tests the  
21 sufficiency of the complaint. Conley v. Gibson, 355 U.S. 41, 45-46 (1957). “To survive a  
22 motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to ‘state a  
23 claim to relief that is plausible on its face.’” Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949 (2009)  
24

1 (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 554, 570 (2007)). The plaintiff must provide  
2 “more than labels and conclusions, and a formulaic recitation of the elements of a cause of action  
3 will not do.” Twombly, 550 U.S. at 555.

4 B. Waiver

5 Because Plaintiffs failed to challenge the non-judicial foreclosure, most of their claims  
6 are forever waived.

7 A borrower waives any claims challenging the validity of a non-judicial foreclosure if:  
8 the “party (1) received notice of the right to enjoin the sale, (2) had actual or constructive  
9 knowledge of a defense to foreclosure prior to the sale, and (3) failed to bring an action to obtain  
10 a court order enjoining the sale.” Plein v. Lackey, 149 Wn.2d 214, 227 (2003). Amendments to  
11 the Deed of Trust Act (“DTA”) made after Plein have attempted to carve out certain post-sale  
12 claims that would otherwise be waived under Plein’s rule. Relevant to this case, the DTA  
13 preserves claims of violations of RCW Title 19 and claims the trustee failed to materially comply  
14 with the DTA. RCW 61.24.127(1). These non-waived claims do not allow the Plaintiff to “seek  
15 any remedy at law or in equity other than monetary damages” or “affect in any way the validity  
16 or finality of the foreclosure sale or a subsequent transfer of the property.” RCW  
17 61.24.127(2)(b), 61.24.127(2)(c).

18 By failing to challenge the foreclosure and trustee’s sale, the Plaintiffs waived any claims  
19 of: (1) quiet title; (2) injunctive relief; (3) breach of contract; (4) unenforceability of the deed of  
20 trust based on unconscionability; and (5) criminal profiteering. All three elements required by  
21 Plein for waiver to apply are alleged in the complaint. Plaintiffs received notice of the  
22 foreclosure sale, had knowledge of it, and failed to enjoin the sale. Plein, 149 Wn.2d at 227. As  
23 the Court understands and construes the five claims noted above, each attacks the validity of the  
24

1 foreclosure and trustee's sale and thus cannot be brought. Moreover, the exceptions to Plein the  
2 Deed of Trust Act carves out do not permit Plaintiffs to pursue any of the five claims. Nowhere  
3 in the DTA are these claims expressly permitted. Allowing any of these claims to move forward  
4 would run contrary to the DTA's intent to limit post-sale remedies and to promote the stability of  
5 land titles. See Plein, 149 Wn.2d at 228. Plaintiffs have therefore waived these five claims by  
6 failing to bring them before the foreclosure sale. The Court finds that these must be  
7 DISMISSED as to all Defendants, including as to the Defendants who merely joined in the  
8 motion to dismiss. The claims are dismissed with prejudice.

9 The Deed of Trust Act permits only two claims to potentially go forward: (1) the CPA  
10 claims; and (2) the claims brought under the Deed of Trust Act. However, the Deed of Trust Act  
11 specifies that any post-sale claims premised on violations of the Act may only be brought against  
12 the trustee. Except for Chicago and NTS, none of the other Defendants is alleged to be a trustee.  
13 As such, the claims premised on DTA violations are DISMISSED as to all defendants except  
14 Chicago and NTS. Although both Chicago and NTS joined in the motion to dismiss, they have  
15 not provided any argument specific to claims against them sufficient for the Court to rule on  
16 whether any claims premised on compliance with the Deed of Trust Act can move forward.

17 B. CPA Claims

18 Plaintiffs' CPA claims against MERS, Chase, JPMorgan, and Freddie Mac fail because  
19 they do not include sufficient allegations of unfair or deceptive acts.

20 1. Standard

21 To prevail on their CPA claim, Plaintiffs must establish five distinct elements: "(1) unfair  
22 or deceptive act or practice; (2) occurring in trade or commerce; (3) public interest impact; (4)  
23 injury to plaintiff in his or her business or property; [and] (5) causation." Hangman Ridge  
24

1 Training Stables, Inc. v. Safeco Title Ins. Co., 105 Wn.2d 778, 780 (1986). Whether a practice is  
2 unfair or deceptive is a question of law for the court to decide if the parties do not dispute what  
3 the parties did. Indoor Billboard/Washington, Inc. v. Integra Telecom of Wash., Inc., 162 Wn.2d  
4 59, 74 (2007). To satisfy the first element, Plaintiffs must show that the act or practice either has  
5 a capacity to deceive a substantial portion of the public or that it constitutes an unfair trade or  
6 practice. Plaintiffs have failed to provide sufficient allegations as required by Iqbal and Rule 8  
7 to show an unfair or deceptive act or practice.

8 2. CPA Claims Against Chase, MERS, JPMorgan, and Freddie Mac

9 Plaintiffs alleged Chase, JPMorgan, MERS, and Freddie Mac engaged in four similar  
10 unfair or deceptive acts: (1) failing to comply with the Deed of Trust Act; (2) using an  
11 unconscionable agreement to facilitate non-judicial foreclosures; (3) preventing borrowers from  
12 knowing who the true beneficiaries of the deed of trust was; and (4) engaging in robo-signing.  
13 (AC ¶ 13.2). These allegations are not sufficient to state a claim.

14 Plaintiffs' first claim is misguided as to MERS. Plaintiffs seem to contend that MERS  
15 cannot be a beneficiary to the deed of trust because it cannot be the nominee and beneficiary.  
16 This argument is flawed. There is no legal reason why MERS cannot be the beneficiary, as that  
17 term is defined in the DTA. The beneficiary is the holder of the promissory note, and there is no  
18 legal reason why MERS cannot be the note holder. RCW 64.21.005(2). Even if MERS was not  
19 properly appointed as nominee and beneficiary, Plaintiffs have not identified any harm that arose  
20 from MERS's role or from the purported deception. The deed of trust discloses MERS as the  
21 nominee and beneficiary and Plaintiffs have not identified any provision of DTA that would  
22 preclude MERS from being both nominee and beneficiary. Although certain issues related to  
23 MERS's role remain pending before the Washington Supreme Court, the Ninth Circuit has  
24

1 rejected the argument that MERS cannot serve as a nominee on a deed of trust where the lender  
2 still holds the note. Cervantes v. Countrywide Home Loans, Inc., 656 F.3d 1034, 1041-42 (9th  
3 Cir. 2011) (applying Arizona law). Plaintiffs have failed to identify any violation of the Deed of  
4 Trust Act related to MERS and they have not alleged any cognizable deceptive or unfair trade or  
5 practice arising out of MERS's role. They have also failed to identify any damages arising out of  
6 this specific alleged DTA violation. The CPA claim related to MERS cannot proceed.

7 Plaintiffs have also failed to identify any specific conduct Chase, JPMorgan, or Freddie  
8 Mac engaged in that violated the DTA that might constitute a CPA claim. Freddie Mac is only  
9 alleged to have purchased the home at the trustee's sale, and Plaintiffs have not provided  
10 sufficient factual detail to understand how this violated the Deed of Trust Act or might in any  
11 way constitute an unfair or deceptive act. The Court similarly cannot find sufficient factual  
12 details showing any violation of the DTA Chase or JPMorgan perpetrated. Chase has explained  
13 that it was permitted to initiate foreclosure on the property by virtue of holding the note that was  
14 indorsed in blank. See RCW 61.24.005(2); RCW 62A.3-205, -3-301. Plaintiffs have not  
15 provided any valid argument or allegation as to why Chase was not a proper beneficiary with  
16 authority to foreclose. As such, the Court finds no properly alleged violation of the DTA. The  
17 Court is similarly at a loss to find any allegations to sustain a claim against JPMorgan having  
18 violated the DTA. These claims are DISMISSED.

19 Plaintiffs' second claim, that the deed of trust was unconscionable, is not adequately  
20 pleaded. The Court cannot accept Plaintiffs' argument the deed of trust violated the CPA  
21 because it contained boilerplate. First, the deed of trust disclosed MERS's role and did so in a  
22 clear manner. Second, the mere presence of boilerplate language is not sufficient to state a claim  
23 under the CPA. Only "[g]rossly unfair or unconscionable contracts" where the material terms  
24

1 were “hidden in a maze of fine print” are properly found to be unfair or deceptive. See State v.  
2 Kaiser, 161 Wn. App. 705, 722 (2011). Here, there is no allegation or evidence that the deed of  
3 trust hid any terms or was a grossly unfair contract. Moreover, the case Plaintiffs rely on,  
4 Kaiser, turned on the fact the defendant had “purposefully withheld material information.” Id.  
5 There is no similar allegation here. The Court finds no basis on which to permit a CPA claim to  
6 move forward on the theory the deed of trust was unconscionable.

7 The third and fourth allegations supporting the CPA claims are nothing more than legal  
8 conclusions unsupported by factual allegations. These theories fail to demonstrate how Plaintiffs  
9 suffered damages from this conduct, and the Court is unable to comprehend the nature of the  
10 claims.

11 The Court DISMISSES these four CPA claims against MERS, JPMorgan, Chase, and  
12 Freddie Mac. Although Defendants assert the claims are barred by the statute of limitations, the  
13 Court does not reach the issue. The Court is not in a proper position to determine the issue of  
14 timeliness given the lack of factual detail on the CPA claims.

15 3. CPA Claims Against MERS

16 As to MERS alone, Plaintiffs contend that it violated the CPA by “misrepresenting to  
17 investors the characteristics and therefore the riskiness of the mortgages managed by their  
18 secondary marker.” (AC ¶ 13.2(A).) This allegation is difficult to understand. From what the  
19 Court is able to glean, the allegation references conduct unrelated to Plaintiffs. There is no  
20 allegation showing that this conduct, even if deceptive, caused Plaintiffs to suffer any damages.  
21 As such, the Court finds the claim fails to satisfy the elements of the CPA and is inadequately  
22 pleaded to meet Iqbal. The Court also dismisses this claim to the extent Plaintiffs argue the  
23 securitization of their loan was an unfair or deceptive act. They have yet to identify anything  
24

1 deceptive about any securitization, particularly where the deed of trust they signed disclosed the  
2 possibility of sales of interests in the mortgage. The securitization does not change the  
3 relationship of the parties or create any obvious unfair or deceptive act. See Lamb v. Mortg.  
4 Elec. Registration Sys., Inc. No. C10-5856RJB, 2011 WL 5827813, at \*6 (W.D. Wash. Nov. 18,  
5 2011). The foreclosure of their home was not made invalid merely because of securitization.  
6 The Court is unable to find any intelligible CPA violation in this theory. The Court DISMISSES  
7 this claim.

8 4. CPA Claims Against Chase and JPMorgan

9 Plaintiffs' CPA claims against Chase premised on deceptive conduct related to loan  
10 modifications are flawed. Plaintiffs allege a theory of "dual tracking" whereby they were  
11 unfairly deceived into believing they had obtained a loan modification while Chase was actually  
12 still foreclosing on the home.

13 Plaintiffs misguidedly base their claim on the notion that Chase and JPMorgan deceived  
14 them into thinking that a loan modification would halt the foreclosure. The documents Plaintiffs  
15 rely on actually show that Chase clearly disclosed the fact that until Plaintiffs made payments  
16 towards modification and submitted the loan modification agreement in a timely manner Chase  
17 would not halt any foreclosure process. (Dkt. No. 43-4 at 13 (language put in bold and  
18 underline).) Similarly, any claim that Plaintiffs were falsely promised a loan modification is  
19 betrayed by the letters Chase actually sent that showed the offer was conditional. (Id.) The  
20 Court is at a loss to find any adequate factual allegations showing unfair or deceptive conduct  
21 with regards to Plaintiffs' dual tracking claim. The Court DISMISSES this claim.

22 The Court also finds no CPA violation can lie in Plaintiffs' allegation that JPMorgan  
23 injured Plaintiffs by "buying structured mortgage loans that relied on deceptive terms and  
24

1 underwriting to artificially lower borrowers' [sic] initial loan payments." As best the Court can  
2 understand, this allegation implies that JPMorgan acquired mortgages based on inadequate  
3 information about the true nature of the loans. This would seem to suggest that JPMorgan was  
4 deceived, not Plaintiffs. Such an unintelligible allegation cannot survive dismissal.

5       5.       CPA Claims Against Freddie Mac

6       The one CPA claims against Freddie Mac that Court has yet to address is simply a legal  
7 conclusion unsupported by any facts. Plaintiffs allege Freddie Mac used unconscionable  
8 agreements to allow for foreclosure. (AC ¶ 13.9(B).) Yet there are no allegations about any  
9 contracts between Plaintiffs and Freddie Mac that could be unconscionable. (AC ¶ 13.9(B).)  
10 This errant statement is not sufficient to state a claim under the CPA.

11       6.       CPA Claims as to the Defendants Joinding in the Motion

12       The Court is unable to determine whether the CPA claims made against the joining  
13 defendants can proceed. None of the joining defendants presented substantive argument. In the  
14 absence of such briefing, the Court will not pass judgment on the CPA claims against these  
15 defendants. Should Plaintiffs chose to replead their CPA claims, they must a substantial effort to  
16 explain with greater precision the factual allegations that support the claimed CPA violations.  
17 Shotgun-style pleadings are not a means of meeting Rule 8 and Iqbal.

18                               **Conclusion**

19       The majority of Plaintiffs' complaint fails to present any tenable claims. The Court finds  
20 the claims for: (1) quiet title; (2) injunctive relief; (3) breach of contract; (4) unenforceability of  
21 the deed of trust based on unconscionability; and (5) criminal profiteering are all waived. The  
22 Court DISMISSES all of the waived claims with prejudice as to all Defendants. The DTA  
23 claims against all defendants except Chicago and NTS are also DISMISSED with prejudice. The  
24

1 Court also DISMISSES the CPA claims against MERS, Chase, JPMorgan, and Freddie Mac  
2 without prejudice. The Court does not rule on whether the CPA claims against the other  
3 defendants who joined in the motion are adequately pleaded.

4 The clerk is ordered to provide copies of this order to all counsel.

5 Dated this 16th day of April, 2012.

6  
7  
8 

9 Marsha J. Pechman  
10 United States District Judge  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

## APPENDIX II

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

TRAVIS MICKELSON and DANIELLE  
H. MICKELSON,

Plaintiffs,

v.

CHASE HOME FINANCE LLC, et al.,

Defendants.

CASE NO. C11-1445 MJP

MINUTE ORDER

The following Minute Order is made by direction of the Court, the Honorable Marsha J. Pechman, United States District Judge:

The Court has reviewed Plaintiffs' motion for reconsideration. (Dkt. No. 59.) The Court invites Defendants to file a single responsive brief of no more than 6 pages by no later than Monday, April 30, 2012. No reply brief will be permitted unless by further order of the Court.

\\

\\

\\

1 The clerk is ordered to provide copies of this order to all counsel.

2 Filed this 25th day of April, 2012.

3  
4 William M. McCool  
Clerk of Court

5 s/Mary Duett  
6 Deputy Clerk  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

### APPENDIX III

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

TRAVIS MICKELSON and DANIELLE  
H. MICKELSON,

Plaintiffs,

v.

CHASE HOME FINANCE LLC, et al.,

Defendants.

CASE NO. C11-1445 MJP

ORDER DENYING MOTION FOR  
RECONSIDERATION

This matter comes before the Court on Plaintiffs' motion for reconsideration of the Court's order granting Defendants' motion to dismiss, docket number 58. (Dkt. No. 59.) Having reviewed the motion, response (Dkt. No. 61), and all related papers, the Court DENIES the motion. The Court has also reviewed the unauthorized reply (Dkt. No. 62), the surreply (Dkt. No. 63), and the declaration of Chess Tachiki (Dkt. No. 63). The Court STRIKES the unauthorized reply.

Motions for reconsideration are disfavored in this District. Local Rule CR 7(h)(1). "The court will ordinarily deny such motions in the absence of a showing of manifest error in the prior

1 ruling or a showing of new facts or legal authority which could not have been brought to its  
2 attention earlier with reasonable diligence.” Id. Plaintiffs argue the Court committed manifest  
3 error by dismissing their “credit bid claim” linked to their quiet title claim asserted against  
4 Freddie Mac. (Dkt. No. 59 at 3.)

5 The Court does not find any manifest error in its decision as to Plaintiffs’ quiet title claim  
6 premised on the credit bid claim. Plaintiffs contend Freddie Mac and the trustee on their deed of  
7 trust violated the Deed of Trust Act by permitting Freddie Mac to make a credit bid at the  
8 nonjudicial foreclosure of Plaintiffs’ home. They assert that only Chase was allowed to make a  
9 credit bid because it was the statutory beneficiary and that Freddie Mac was not. Plaintiffs are  
10 correct the Deed of Trust Act permits only the beneficiary to make a credit bid. RCW  
11 61.24.070(2). However, in order to state a claim of quiet title to void the sale of their home,  
12 Plaintiffs must show not only that there was not strict compliance with the Deed of Trust Act, but  
13 that they suffered prejudice. Amresco Independence Funding, Inc. v. SPS Props., LLC, 129 Wn.  
14 App. 532, 537 (2005). Here, even if Freddie Mac was improperly allowed to purchase Plaintiffs’  
15 home via credit bid at the trustee’s sale (a point Defendants contest), Plaintiffs have not alleged  
16 any prejudice arising out of this arrangement. Plaintiffs have not shown any facts warranting  
17 reconsideration and their invocation of future changes in Washington law is irrelevant.

18 The Court DENIES the motion for reconsideration, which contains no showing of  
19 manifest error or any other basis for reconsideration.

20 The Court also STRIKES the unauthorized reply brief Plaintiffs submitted. As  
21 Defendants properly point out, the Local Rules give the Court discretion to permit a reply on a  
22 motion for reconsideration, and the Court expressly barred Plaintiffs from filing a reply unless by  
23 further Court order. Local Rule CR 7(h)(3); (Dkt. No. 60). Plaintiffs violated that order by  
24

1 filing a reply. Regardless of what Plaintiffs labeled their brief, it was indeed a reply, barred by  
2 the Court's order. Further, it is also not the province of the Court's case administrator to  
3 authorize the filing of a reply brief. Case administrators may answer technical questions about  
4 how to label filings, but they do not direct parties to file any particular documents or provide  
5 authorization to do so. The technical advice as to how to file a CM/ECF document does not  
6 substitute for a lawyer's reading of the rules to determine whether a response, however labeled,  
7 is called for. The Court finds the reply unauthorized and in violation of the Court's previous  
8 order. The Court STRIKES the reply (Dkt. No. 62) and does not consider it in reaching its  
9 decision.

10 The clerk is ordered to provide copies of this order to all counsel.

11 Dated this 7th day of May, 2012.

12  
13 

14 Marsha J. Pechman  
15 United States District Judge  
16  
17  
18  
19  
20  
21  
22  
23  
24